

## FACSIMILE COVER SHEET

OFFICIAL

**Licata & Tyrrell P.C.**66 E. Main Street  
Marlton, New JerseyRECEIVED  
CENTRAL FAX CENTER

NOV 03 2003

Tel: (856) 810-1515  
Fax: (856) 810-1454

November 3, 2003

**TO:** Examiner Wilder (TC1600)**GROUP:** 1637**FAX NUMBER:** 703-872-9306**ATTORNEY DOCKET NO.:** DEX-0273**SERIAL NO.:** 10/001,857**FILED:** November 20, 2001**NUMBER OF PAGES:****MESSAGE:** Attached please find Amendment Transmittal Letter, Reply to Restriction Requirement and Certificate of Transmission by Facsimile.

Kathleen A. Tyrrell, Registration No. 38,350

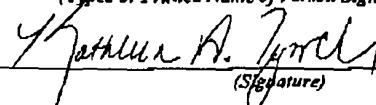
**URGENT! PLEASE DELIVER IMMEDIATELY UPON RECEIPT. THANK YOU!**

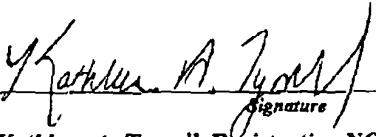
\* \* \* \* \*

If you have any questions, or did not receive the proper number of pages, or had trouble during transmission, please call 856-810-1515.

**CONFIDENTIALITY NOTICE**

The information contained in this facsimile message is legally privileged and confidential, and intended only for the use of the individual(s) and/or entity(ies) named above. If you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying distribution or taking of any action in reliance on the contents of the telecopied materials is strictly prohibited and review by any individual other than the intended recipient shall not constitute waiver of the attorney client privilege. If you have received this transmission in error, please immediately notify us by telephone in order to arrange for the return of the materials. Thank you.

<b>CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)</b> Applicant(s): Macina et al.			Docket No. <b>DEX-0273</b>
Serial No. <b>10/001,857</b>	Filing Date <b>November 20, 2001</b>	Examiner <b>Wilder, Cynthia B.</b>	Group Art Unit <b>1637</b>
Invention: Compositions and Methods Relating to Lung Specific Genes and Proteins			
<p>I hereby certify that this <u>Reply to Restriction Requirement</u> (Identify type of correspondence) is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. <u>703-872-9306</u>) on <u>November 3, 2003</u> (Date)</p> <p style="text-align: center;"><u>Kathleen A. Tyrrell</u> (Typed or Printed Name of Person Signing Certificate)  (Signature)</p>			
<p>Note: Each paper must have its own certificate of mailing.</p>			

<b>AMENDMENT TRANSMITTAL LETTER (Large Entity)</b>				Docket No. <b>DEX-0273</b>	
Applicant(s): <b>Macina et al.</b>					
Serial No. <b>10/001,857</b>	Filing Date <b>November 20, 2001</b>	Examiner <b>Wilder, Cynthia B.</b>		Group Art Unit <b>1637</b>	
Invention: <b>Compositions and Methods Relating to Lung Specific Genes and Proteins</b>					
<b>TO THE COMMISSIONER FOR PATENTS:</b>					
Transmitted herewith is an amendment in the above-identified application.					
The fee has been calculated and is transmitted as shown below.					
<b>CLAIMS AS AMENDED</b>					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	19 -	20 *	0	x \$18.00	\$0.00
INDEP. CLAIMS	2 -	5 *	0	x \$84.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
<b>TOTAL ADDITIONAL FEE FOR THIS AMENDMENT</b>					<b>\$0.00</b>
<p><input checked="" type="checkbox"/> No additional fee is required for amendment.</p> <p><input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____</p> <p><input type="checkbox"/> A check in the amount of _____ to cover the filing fee is enclosed.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. <b>50-1619</b></p> <p><input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16.</p> <p><input checked="" type="checkbox"/> Any patent application processing fees under 37 CFR 1.17.</p>					
 <b>Kathleen A. Tyrrell</b> <i>Signature</i> Kathleen A. Tyrrell, Registration NO. 38,350					
Dated: <b>November 3, 2003</b>					
<div style="border: 1px solid black; padding: 5px;"> I certify that this document and fee is being deposited on _____ with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. </div>					
<div style="border: 1px solid black; padding: 5px;"> <i>Signature of Person Mailing Correspondence</i> </div>					
<div style="border: 1px solid black; padding: 5px;"> Type or Printed Name of Person Mailing Correspondence </div>					

11/03/03 12:04 FAX 856 810 1454 LICATA & TYRRELL

→ PTOBF

004  
RECEIVED  
CENTRAL FAX CENTER

NOV 03 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

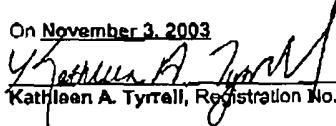
OFFICIAL

Attorney Docket No.: DEX-0273  
Inventors: Macina et al.  
Serial No.: 10/001,857  
Filing Date: November 20, 2001  
Examiner: Wilder, Cynthia B.  
Group Art Unit: 1637  
Title: Compositions and Methods Relating to Lung Specific Genes and Proteins

Certificate of Facsimile Transmission

I hereby certify that this document is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

On November 3, 2003

  
Kathleen A. Tyrrell, Registration No. 38,350

Mail Stop  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Reply to Restriction Requirement

This is a reply to the Restriction Requirement mailed October 2, 2003 setting a one (1) month statutory period for response. Please enter the following remarks into the record.

Remarks begin at page 2.

Attorney Docket No.: **DEX-0273**  
Inventors: **Macina et al.**  
Serial No.: **10/001,857**  
Filing Date: **November 6, 2001**  
Page 2

**REMARKS**

Claims 1-17 are pending in the instant patent application. Claims 1-17 have been subjected to a Restriction Requirement as follows:

Group I, claims 1-5, 7-9, and 15, drawn to an isolated nucleic acid, classified in class 536, subclass 23.1;

Group II, claims 6 and 14, drawn to a hybridization method for determining the presence of lung specific nucleic acid (LSNA), classified in class 435, subclass 6;

Group III, claim 10, 11 and 15, drawn to an isolated polypeptide, classified in class 530, subclass 350;

Group IV, claims 12, drawn to an antibody, classified in class 424, subclass 130.1;

Group V, claims 13, 14, drawn to a protein binding assay for determining the presence of lung specific nucleic acid, classified in class 435, subclass 7.1;

Group VI, claim 16, drawn to a method of treating a patient with drug, classified in class 514, subclass 12; and

Group VII, claim 17, drawn to a vaccine, classified in class 424, subclass 184.1.

The Examiner suggests that these Groups are distinct, each

Attorney Docket No.: **DEX-0273**  
Inventors: **Macina et al.**  
Serial No.: **10/001,857**  
Filing Date: **November 6, 2001**  
Page 3

from the other.

Specifically, with respect to Groups I, III, IV and VII, the Examiner suggests that the claims of these Groups are drawn to unrelated products.

With respect to Groups I and II, IV and Groups III, IV and V, VI, the Examiner has acknowledged their relationships as product and process of use. However, the Examiner suggests that these Groups are distinct because the products can be used in materially different processes.

With respect to Groups II, V and VI, the Examiner suggests that the Groups are unrelated methods.

Further, the Examiner suggests that each of the above Groups reads on patentably distinct sequences and has requested that Applicants further elect a single amino acid or single nucleic acid sequence.

Applicants respectfully traverse this Restriction Requirement.

MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the restriction is not required. A search of prior art relating to an elected

Attorney Docket No.: **DEX-0273**  
Inventors: **Macina et al.**  
Serial No.: **10/001,857**  
Filing Date: **November 6, 2001**  
Page 4

nucleic acid, polypeptide or antibody would also reveal any references teaching uses for the nucleic acid, polypeptide or antibody. Accordingly, Applicants believe that searching of all the claims, at least when limited to elected nucleic acids, polypeptides, or antibodies, is overlapping and would not place an undue burden on the Examiner if the Restriction is not made.

Thus, since this Restriction Requirement does not meet both criteria as set forth in MPEP § 803 to be proper, reconsideration and withdrawal of this Restriction Requirement is respectfully requested.

In addition, with respect to the election of a single sequence, MPEP § 803.04 clearly states that a reasonable number of nucleotide sequences, normally ten sequences, can be claimed in a single application. Accordingly, withdrawal of this sequence election requirement and reconsideration to include a more reasonable number of at least 10 sequences in accordance with MPEP § 803.04 is also respectfully requested.

However, in an earnest effort to advance the prosecution of this case Applicants elect Group I, claims 1-5, 7-9 and 15 with traverse. Further, Applicants elect SEQ ID NO:42 encoding SEQ ID NO:145, with traverse.

Attorney Docket No.: **DEX-0273**  
Inventors: **Macina et al.**  
Serial No.: **10/001,857**  
Filing Date: **November 6, 2001**  
Page 5

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

*Kathleen A. Tyrrell*  
Kathleen A. Tyrrell  
Reg. No. 38,350

Date: **November 3, 2003**

LICATA & TYRRELL P.C.  
66 E. Main Street  
Marlton, New Jersey 08053  
(856) 810-1515